IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 366 of 1996

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UMEDALI AMRUTLAL

Versus

STATE OF GUJARAT

Appearance:

MR YOGESH S LAKHANI for Petitioner No. 1

MR KL PANDYA, AGP, for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 01/04/2004

ORAL JUDGEMENT

1. The petitioner is a proprietorship firm carrying on the business of selling essential articles. On 26th August 1993 the shop of the petitioner was inspected by the authorities and certain irregularities were found. In pursuance of the same show-cause notice dated

16.9.1993 was issued to the petitioner. The petitioner has filed his reply to the said show-cause notice. After considering the reply of the petitioner the Collector, Surendranagar, has passed an order for confiscation of 50% of the total quantity of the articles seized, the value of which is quantified at Rs.1,26,001/-.

2. Against the order of the Collector, Surendranagar, the petitioner filed Revision Application before the State Government being Revision Application No.734/93. The revisional authority by order dated 15.11.1995 partly allowed the application by reducing the penalty of 50% to 25% of the total quantity of the articles seized, the value of which is quantified at Rs.55,079/-.

3. Feeling aggrieved by the order passed by the revisional authority, in so far as it is against the petitioner, the petitioner has filed the present petition.

4. Mr. Mankad for Mr. Lakhani for the petitioner has sought reliance on the Government Circular dated 11th November 1984 whereby the Government has instructed the Department that penalty should be imposed only on the stock which was not reflected in the stock register. From the record of the petition Mr. Mankad has pointed out that as per the notice itself the excess stock was 355 kgs of groundnut seed, 100 kgs of Bajra and 201 kgs. of Tal and inspite of that position the State Government has imposed penalty relying on the total stock viz. 2347.5 kgs of groundnut seeds, 52.5 kgs of Tal and 325 kgs. of Bajra.

5. Mr. Mankad submitted that the correct calculation of penalty is is as under:

Difference in stock:

Groundnut seeds : 355kgs = Rs.7,987.50

Tal: 210-52.5kgs=157.5 kgs = Rs.3,465.00

Bajra 100 Kgs. (Rs.3.40/kg) = Rs. 340.00

Total Rs.11,792.50

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Therefore, the excess amount is:

Rs.55,079 - 11,792.50 = Rs.43,286.50.

6. Learned counsel for the respondent is unable to contest the aforesaid calculation submitted by the learned counsel for the petitioner. Under the circumstances, in view of the above mentioned Government Circular and the facts of the case, the impugned order is required to be modified.

7. Accordingly the petition is partly allowed. The impugned order of the revisional authority dated 15.11.1995 is modified to the extent that the petitioner is required to pay penalty in the sum of Rs.11,792.50 instead of Rs.55,079 as imposed by the revisional authority. The difference of amount/bank guarantee will be released to the petitioner. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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